

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3771.1 Chg 1

11-29-83

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

1. PURPOSE. To transmit revised pages to DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81.
2. EXPLANATION OF CHANGES. Clarification of involvement by a deciding official; approval prior to using official time; transmittal of the grievance file to the Director of Personnel; procedures for requesting review of a decision to reject or cancel a grievance; and nongrievable matters that are subject to final administrative review outside of DOE, based on guidance from the Office of Personnel Management.
3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Date</u>
	1	7-2-81	1	7-2-81
	2	7-2-81	2	11-29-83
	I-1	7-2-81	I-1	7-2-81
	I-2	7-2-81	I-2	11-29-83
	II-5	7-2-81	II-5	7-2-81
	II-6	7-2-81	II-6	11-29-83
	II-7 (and II-8)	7-2-81	II-7 (and II-8)	11-29-83
	Atch I, page 1	7-2-81	Atch I, page 1	11-29-83
	Atch I, page 2	7-2-81	Atch I, page 2	7-2-81

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- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



WILLIAM S. HEFFELFINGER
Director of Administration

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INITIATED BY:

Office of Personnel

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3771.1

7-2-81

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

1. PURPOSE. To provide general policy guidance and instructions and state responsibilities for establishing and administering the grievance system of the Department of Energy (DOE). This Order is in accordance with part 771, title 5, Code of Federal Regulations, which sets forth the regulations under which each agency shall establish an administrative grievance system.
2. CANCELLATION. Interim Management Directive 3771, GRIEVANCE POLICY AND PROCEDURES, of 2-17-78, and DOE N 3771.1, GRIEVANCE PROCEDURE FOR RESOLVING MERIT PAY COVERAGE DISPUTES, of 10-15-80.
3. COVERAGE AND EXCLUSIONS.
 - a. Coverage.
 - (1) This Order covers all employees except those excluded in paragraphs 3b(l)(a) through (c).
 - (2) These procedures are intended to cover all matters of employee concern or dissatisfaction relating to employment that is subject to the control of management, and for which the employee seeks personal relief; including matters which the employee alleges have resulted in coercion, reprisal, or retaliation, and for which there is no other established procedure for appeal or complaint, and which is not otherwise excluded in subparagraph 3b.
 - (3) Only employees at the 13 through 15 grade level are covered by Chapter III.
 - b. Exclusions.
 - (1) The following individuals are excluded from coverage of this Order:
 - (a) Employees excluded by part 771, title 5, Code of Federal Regulations.
 - (b) Employees who are members of a bargaining unit represented by a union which is recognized by the DOE and who are covered by a negotiated grievance procedure.
 - (c) Applicants for employment with DOE.
 - (2) This Order excludes matters excluded by part 771, title 5, Code of Federal Regulations. Attachment 1 contains a detailed list of these exclusions.

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4. DEFINITIONS.

- a. Deciding Official. Except in the case of the Secretary, an official at a higher organizational level (not necessarily higher grade) than any other individual directly involved in the matter being grieved and who has been delegated the authority to make final decisions on formal grievances. The deciding official is normally the supervisor or manager immediately above the supervisor to whom the informal grievance was submitted, unless that individual was directly involved in the action being grieved. Involvement means more than mere knowledge of the matter being grieved. To have been "involved", the deciding official must have made or influenced a decision regarding the matter being grieved or must have a personal interest in the matter. In the latter event, the deciding official shall be the next higher level supervisor in the management chain who was not directly involved in the action being grieved. Only the Secretary may be involved in a grievance, be the supervisor with whom an informal grievance is filed, and be the deciding official.
- b. Days. Calendar days.
- c. Employees. Includes former DOE employees who meet the time limits for presenting a grievance and for whom a remedy can be granted. In Chapter III, this definition means employees who are in grades 13 through 15 only.
- d. Factfinding.
- (1) An inquiry suitable to ascertain the relevant circumstances surrounding a grievance and to provide the basis for a written report which contains appropriate recommendations on the matter being examined and reasons for the recommendations.
 - (2) In the event of a merit pay grievance, the report shall contain information, facts, and supporting documents for the original determination and the recommended decision shall be limited to include or exclude the employee's position under the merit pay system. The inquiry shall include, but not necessarily be limited to, consideration of:
 - (a) The point of view of the supervisor, the employee, and a representative from the servicing personnel office.
 - (b) Applicable laws, regulations, case decisions, and Departmental policies.
- e. Formal Grievance. A request made in writing by an employee, a former employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of DOE management.

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CHAPTER I

GENERAL

1. SUPPLEMENTS AND REDELEGATIONS. This Order shall not be supplemented without prior approval from the Director of Personnel. This does not apply to redelegating authority.
2. REPRESENTATION.
 - a. An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceeding except that this right does not accord the grievant or the representative the right to appear personally before the Director of Personnel. The designation of a representative must be in writing and provided to the supervisor or deciding official. If the grievant chooses another employee of the DOE as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the grievant's supervisor, may disallow the employee's choice of a representative in a grievance on the basis of:
 - (1) Priority needs of the DOE mission. For instance, it is not intended that any one employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission. Should this condition arise, the employee concerned will be advised by the supervisor to curtail representation activities.
 - (2) Unreasonable cost to the DOE.
 - (3) Conflict of interest or conflict of position.
 - b. The grievant may challenge a decision to disallow the choice of representative to the deciding official and obtain a decision before proceeding with the grievance. If the grievance is presented under the procedures in Chapter II, the challenge will be submitted to the servicing personnel officer who will forward the challenge to the representative's supervisor at the next higher level in the management chain who was not involved in the original decision to disallow the representative. The deciding official or supervisor will make a decision regarding the disallowance of a representative no later than 10 days after receipt of the challenge.
 - c. The DOE will not designate a representative for a grievant, nor will the DOE require any employee or individual to serve as a representative of another. If a grievant requests assistance in obtaining representation, the servicing personnel office will make available to the grievant information concerning sources of assistance. All arrangements for a representative must be made by the grievant.

- d. In the event the grievant wishes to change representatives, the procedures described in subparagraphs 2a through 2c apply.
- 3. COMMUNICATION. An employee has a right to communicate with the servicing personnel office or any DOE counselor at any stage of the grievance procedure.
- 4. USE OF OFFICIAL TIME.
 - a. An employee and the employee's representative (if employed by the DOE) are entitled to a reasonable amount of official time to present a grievance; they are not entitled to official time to prepare the grievance except to the extent necessary to obtain information and interview witnesses not otherwise available during nonwork hours. Employees must obtain approval from their supervisors prior to the use of official time. "Presenting" includes discussions with supervisors and attendance at any hearing, inquiry, or meeting in the formal stage.
 - b. When the deciding official hearing the formal grievance deems it necessary to the presentation of the grievance, the employee and the representative (if employed by the DOE) shall be permitted official travel, and travel time shall not be charged to leave. In no case will the employee or the representative be granted official time or be reimbursed for expenses associated with the investigation or presentation of a grievance, except as provided in subparagraphs 4a and b.
- 5. OBLIGATION OF THE EMPLOYEE. An employee, in exercising the entitlement to present a grievance under this Order, shall:
 - a. Comply with appropriate time limits established in this Order;
 - b. Furnish sufficient detail to clearly identify the matter being grieved; and
 - c. Specify the personal relief being requested.
- 6. GRIEVANCE FOLLOWUP.
 - a. Servicing personnel offices and supervisors shall followup on grievances to assure that the relief granted the employee and any recommendations contained in the report of findings and recommendations accepted by the deciding official have been implemented.
 - b. In all cases where a decision is favorable to an employee, the specific action to be taken shall be set forth in the written decision. The action directed shall be taken promptly, with followup in accordance with the above paragraph.
- 7. CANCELLATION OF GRIEVANCE. A grievance shall be canceled:
 - a. At the employee's written request.

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- (b) Satisfactory completion of a course for grievance examiners, arbitrators, or investigators.
- (c) A good working knowledge of the relationship between personnel administration and overall management concerns; the principles, systems, methods, and administrative machinery for accomplishing the work of the DOE; and a high degree of ability to:
 - 1 Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information and arrive at sound conclusions on the basis of that information;
 - 2 Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;
 - 3 Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;
 - 4 Interpret and apply regulations and other complex written material;
 - 5 Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and
 - 6 Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.
- (6) If the factfinder determines that a hearing is required to establish the facts pertinent to the grievance, the parties involved shall identify, in writing, all witnesses they plan to call and the purpose of their testimony. The factfinder will give due consideration, when calling witnesses, to the numbers requested by the parties and the potential for duplication of evidence given by witnesses in terms of cost and use of official time. Any witnesses requested by the employee or by management who are under the jurisdiction of the DOE and whose testimony, in the judgment of the factfinder is necessary for development of the facts will be called. DOE employees participating in a grievance proceeding as witnesses will be considered to be in a duty and pay status during such participation, if otherwise in a duty and pay status. If the factfinder determines that the presence of witnesses who are not DOE employees is relevant and in the interest of the Government, their transportation costs and per diem shall be paid in accordance with existing travel regulations. Such witnesses may not be compelled to appear to testify. Each witness will be advised that full and complete testimony is expected and that the witness will not be subject to any restraint, coercion, discrimination, or reprisal as a result of such testimony.

- (7) Normally, if a hearing is held, a written summary will suffice. A hearing transcript will be made only when both parties request it, or when the factfinder determines that a verbatim transcript is necessary and so documents the grievance file.
- (8) The deciding official will furnish appropriate physical facilities, clerical support (including preparation of summaries of hearing transcripts), and other requirements for factfinding procedures.
- (9) Upon completion of the inquiry, the factfinder will assure that a designated member of the servicing personnel office, the employee, and the employee's designated representative, if any, have had an opportunity to review and comment on all documents in the grievance file. Any comments submitted must be included in the grievance file.
- (10) The factfinder will submit the original copy of the grievance file with a report of findings and recommendations to the deciding official with a copy to the servicing personnel office.

d. Grievance Decision.

- (1) Upon receipt of the report of findings and recommendations, the deciding official must assure that the employee's point of view has received fair consideration. It is essential that all decisions at any level be based upon facts; be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and, where the recommendation is adverse to the employee, contain a detailed explanation.
- (2) Within 7 days of receipt of the report of findings and recommendations, the deciding official will either:
 - (a) Accept the recommendations contained in the report, and so notify the employee of the decision with a copy to the servicing personnel office. This written decision will be final and contain findings on all issues covered by the factfinding process. The employee may not request a further review of the same grievance within the DOE.
 - (b) Make a final decision to grant the personal relief sought by the employee, without regard to the recommendations contained in the report, provided such relief is consistent with policy, regulation, or other administrative or statutory requirements.
 - (c) Determine that all or some of the recommendations contained in the report are unacceptable. In this case, the complete grievance file will be transmitted, through the Director of

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Personnel Policies and Programs (MA-202), to the Director of Personnel (MA-20) with a specific statement of the basis for finding all or some of the recommendations unacceptable. A copy of the statement will, at the time of transmittal to the Director of Personnel, be furnished to the employee and the employee's representative, if any.

- (1) Within 7 days of receipt, the Director of Personnel will review the grievance file and the deciding official's determination of unacceptability and will forward the complete file together with appropriate comments, suggestions, and recommendations concerning the reasons certain recommendations were determined unacceptable, to the next higher level supervisor in the management chain who has not been involved in the grievance.
- (4) The final decision of the next higher level supervisor in the management chain, as referenced in paragraph 4d(3), shall be rendered to the employee within 15 days after the receipt of the grievance file and a copy furnished concurrently to the servicing personnel office. This final decision will be in writing, contain findings on all issues covered by the factfinding procedure,, and direct what relief, if any, is to be provided. The employee may not obtain a further review of the same grievance within the DOE.

5. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR TERMINATE THE GRIEVANCE SHORT OF A FINAL DECISION ON ITS MERITS.

- a. An employee may request review of any decision on a formal grievance when the decision rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.
- b. The request for review shall be in writing explaining fully and clearly the basis for disagreeing with the contested decision, and shall be submitted to the servicing personnel office within 15 days after the date of receipt of the decision. The servicing personnel office will transmit the request for review, a copy of the decision that rejected, canceled, or terminated the grievance, and the complete grievance file, through the Director of Personnel Policies and Programs, to the Director of Personnel. The grievance file should be established in accordance with Chapter I, paragraph 8, of this Order.
- c. The Director of Personnel will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision and may direct that a decision be rendered on the merits of the grievance.
- d. Should the Director of Personnel sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within the DOE.

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NONGRIEVABLE MATTERS

1. The content of published DOE regulations and policy.
2. A decision which is appealable to the Merit Systems Protection Board.
3. A decision subject to final administrative review by the Office of Personnel Management under applicable laws or regulations.
4. A decision subject to final administrative review by the Equal Employment Opportunity Commission under applicable laws or regulations.
5. Matters administered by the General Accounting Office and the Office of Workers Compensation Programs.
6. Grievances with issues included in a complaint filed with the Office of Special Counsel, MSPB, will not be processed until the allegation filed with the Special Counsel is resolved. This avoids dual consideration. Pursuant to title 5, Code of Federal Regulations, section 1251.2, the Office of Special Counsel shall make no investigation if it determines that the method may be resolved more appropriately under an administrative appeals procedure, including a pending grievance under a formal agency grievance proceeding.
7. Nonselection for promotion from a group of properly ranked and certified candidates.
8. A preliminary warning notice or an action which if effected would be covered under the grievance system or excluded from coverage by paragraph 2.
9. A return of an officer or employee from the Senior Executive Service to the General Schedule during the 1-year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code.
10. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted.
11. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter I of chapter 43 of title 5, United States Code, and part 430, title 5, Code of Federal Regulations.
12. An action which terminates a term promotion at the completion of a specified period, in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with part 335, title 5, Code of Federal Regulations.

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13. The granting of, or failure to grant, an employee performance award or the adopting of, or failure to adopt, an employee suggestion or invention under sections 4503-4505 of title 5, United States Code; or the granting of, or failure to grant, an award of the rank of meritorious or distinguished executive under section 4507 of title 5, United States Code.
14. The receipt of, or failure to receive, a performance award under section 5384 of title 5, United States Code, or a quality salary increase under section 5336 of title 5, United States Code.
15. A merit pay determination, or a merit pay increase or the lack of a merit pay increase under the merit pay system, or a decision on the granting of, or failure to grant, cash or honorary recognition under chapter 54 of title 5, United States Code, and part 540 of title 5, Code of Federal Regulations.
16. The termination under subpart H of part 315, title 5, Code of Federal Regulations of a probationer for unsatisfactory performance.
17. A performance evaluation under subchapter II of chapter 43 of title 5, United States Code (performance appraisal of the Senior Executive Service).
18. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under section 3321(a)(2) of title 5, United States Code, and subpart I of part 315, title 5, Code of Federal Regulations.
19. A separation action not excluded by this Attachment.